## United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

## Advice Memorandum

DATE: April 25, 2008

TO : Martha Kinard, Regional Director

Region 16

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Texas Carpenters & Millwrights Regional 560-2575-6746

Council (Interic Specialties, Inc.) 560-5067-2050 Case 16-CP-172 578-2025-6750

This case was submitted for advice as to whether the Union engaged in unlawful, coercive conduct when approximately 20-25 Union agents handbilled a common situs in pursuit of an asserted area standards objective. We conclude that the conduct was not unlawful, and thus that the charge should be dismissed, absent withdrawal.

Briefly, in December 2007 and again since February 2008, Respondent Texas Carpenters & Millwrights Regional Council has handbilled members of the public at a large, 45-story office building in Dallas, Texas. The Union asserts that the handbilling is in furtherance of an area standards dispute with Charging Party Interic Specialties, Inc., a drywall subcontractor engaged in construction projects located in the building. Handbills portray a picture of a rat eating an American flag and contend that Interic does not meet area labor standards. The handbills call for "shame" on a neutral employer, Starbucks, for hiring Interic, and ask interested individuals to call Starbucks to complain.

The Union began the handbilling campaign in December 2007 with five to seven handbillers stationed outside the main entrance of the building. After December, the Union resumed the campaign in February, using between 20-25 handbillers. The handbillers stand about five or six feet apart along the length of the building and extend their arms to pedestrians to offer handbills. At times, they have formed two lines alongside a public sidewalk, with pedestrians walking in between. The handbillers do not routinely move from their stations and do not carry picket signs or placards. They do not make excessive noise, follow or otherwise confront pedestrians or motorists, or otherwise attempt to prevent individuals from making deliveries or entering or exiting the building. An employer agent saw one individual dressed as a "rat" standing with the handbillers for a few minutes on one day; he did not

wear a sign, carry a placard or otherwise identify himself as a Union agent and has not returned.  $^{1}$ 

The Act protects peaceful handbilling that merely attempts to persuade, but proscribes coercive conduct where an object of that conduct is to exert improper influence on a neutral party. Unlawful secondary conduct includes confrontational conduct that "does not constitute actual picketing but which, nevertheless, induces or encourages employees and restrains and coerces employers." Thus, the Act prohibits actions that "'[overstep] the bounds of propriety and [go] beyond persuasion' so as to become 'coercive to a very substantial degree.'"

We conclude that the Union engaged in peaceful handbilling protected under <u>DeBartolo II</u>. The Union's efforts to advise the public of its asserted area standards dispute with the Charging Party were not accompanied by coercive or confrontational behavior that disrupted tenants' or the building owner's use of the property. Neither did handbillers confront representatives of Interic, neutral employees or consumers, other than to offer them handbills. The Union's use of between 20-25 largely static, non-ambulatory handbillers spread over the length of a large, 45-story office tower in downtown Dallas is not so excessive as to constitute coercion in the absence of any evidence of patrolling, blocking, or

<sup>&</sup>lt;sup>1</sup> The Union has not abided by a reserved gate system that has been created for employees of Interic and other employers. The Employer also disputes the Union's stated area standards rationale for the handbilling.

 $<sup>^2</sup>$  Edward J. DeBartolo v. Florida Coast Building & Construction Trades Council (DeBartolo II), 485 U.S. 568, 580 (1988).

<sup>&</sup>lt;sup>3</sup> Service Employees Local 87 (Trinity Maintenance), 312 NLRB 715, 743 (1993), enfd. per curiam 103 F.3d 139 (9<sup>th</sup> Cir. 1996) (large groups of demonstrators engaged in trespassory entries accompanied by marching and shouting).

<sup>&</sup>lt;sup>4</sup> <u>Ibid</u>, quoting <u>Mine Workers District 29</u> (New Beckley <u>Mining</u>), 304 NLRB 71, 72 (1991), enfd. 977 F.2d 1470 (D.C. Cir. 1992) (unlawful mass demonstration where 50-140 union supporters milled about in parking lot outside neutral facility while shouting antagonistic slogans at replacement workers).

excessive noise. 5 Further, although the Employer disputes the factual basis behind the Union's area standards message, the handbill itself is not coercive under the Act. The handbill accurately identifies the primary with which the Union has a dispute and sets forth the relationship between the primary Interic and neutral Starbucks. Moreover, the Board in Delta II held that even misleading handbills that tended to confuse a primary dispute with a neutral employer were wholly lawful.6

Accordingly, since the Union's conduct was not coercive and thereby not picketing with the meaning of Section 8(b)(7), the Region should dismiss the charges, absent withdrawal.

B.J.K.

<sup>&</sup>lt;sup>5</sup> Compare Mine Workers District 29 (New Beckley Mining), supra; Service Employees Local 399 (William J. Burns Int'l Detective Agency), 136 NLRB 431, 436 (1962) ("[t]hat such physical restraint and harassment must have been intended may be inferred from the number [20-70] of marchers engaged in patrolling (far more than required for handbilling or publicity purposes)"); Mine Workers District 12 (Truax-Traer Coal Co.), 177 NLRB 213, 217-18 (1969), enf. 76 LRRM  $\overline{2828}$  (7th Cir. 1971) (finding picketing under section 8(b)(7) where approximately 200 union agents arrived at the worksite and congregated around or in their parked cars).

<sup>&</sup>lt;sup>6</sup> Service Employees Local 399 (Delta Air Lines) ("Delta II"), 293 NLRB 602, 603 (1989), on remand from 743 F.2d  $\overline{1417}$  (9<sup>th</sup> Cir. 1984).